



March 25, 2002

Ms. Anne M. Constantine
Legal Counsel
Dallas-Fort Worth International Airport Board
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2002-1481

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160244.

The Dallas-Fort Worth International Airport Board (the "board") received a request for information regarding an environmental compliance audit. You state that you have released some of the requested information to the requestor. You claim, however, that the submitted audit report is excepted from disclosure under Rule 503 of the Texas Rules of Evidence. We have considered your submitted arguments and reviewed the submitted information.

You suggest that the submitted audit report falls within the scope of section 552.022 of the Government Code. Section 552.022(a) provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation
made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). Based on your indication that the submitted audit report is complete, we find that section 552.022(a)(1) requires the release of the submitted information unless the information is expressly confidential under other law. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we will consider whether the submitted information is confidential under rule 503.

Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under rule 503 provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.-Houston [14th Dist.] 1993, no writ).

You explain that the audit at issue was conducted for the board by the law firm of Cantey & Hanger, L.L.P., with the assistance of CH2M HILL, Inc. You further explain that Cantey & Hanger, L.L.P. conducted this audit in accordance with a contract with the board to provide legal advice and opinions regarding DFW Airport's compliance with environmental

laws and regulations. You further indicate that the communications contained in the audit report were never intended to be disclosed to third persons. Upon review of your arguments and the submitted information, we conclude that the submitted information is protected by the attorney-client privilege under Texas Rule of Evidence 503. *See Harlandale Independent School District v. Cornyn*, 25 S.W.3d 328 (Tex. App.--Austin 2000). Thus, the board may withhold the submitted information under Texas Rule of Evidence 503.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

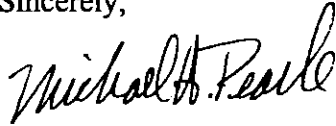
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/KAE/sdk

Ref: ID# 160244

Enc: Submitted documents

c: Ms. Terri Langford, *The Dallas Morning News*
c/o Anne M. Constantine
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(w/o enclosures)